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APPLICATION NO.	FILING DATE	FIRST NAME INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 629,607	07/31/2000	Andrea Lukas	4180-66	4272

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EXAMINER

SPIECH, MARK

ART UNIT

PAPER NUMBER

1744

DATE MAILED: 01/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/629,607

Applicant(s)

LUKAS ET AL

Examiner

Mark Spisich

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may ~~not~~ request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

2. The drawings are objected to because figure 1 should be labeled as such. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is noted clear as to whether the claims are meant to positively recite the handpiece/motor/vibrator. This is because of specific recitations with respect to the vibrator being arranged in the interior of the cover (claim 1) and the recitation in claim 2 that the sleeve covers the portion of the cover "which projects beyond the handpiece". There is not antecedent for "the accessories" (claim 4, line 3). "Clear width" (claim 8) and "continuous" (claim 10) are confusing/awkward. It is not clear as to whether claim 4 was intended to positively recite the "accessory" or whether it was merely intended to recite that the sleeve was capably of holding it. This comes into play with respect to claims 11-13. Claim 12, with respect to the term "rotary piece",

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is confusing in that there is no mention of a means to rotate the accessory. Applicant should review the claims for any additional informalities.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1,2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Okada (USP 5,421,726). The patent to Okada discloses an electric toothbrush (2) comprising a motor (12) in a handpiece (4) for driving vibration-generating means (16) and an accessory mount comprising an elongated protective sleeve (8) which includes an interior portion adapted to receive the vibration generating means (16) and further a sleeve (6b) fitted onto the cover (8) so as to cover at portion of its length. The sleeve (6b) covers substantially the entire portion of the cover (8) that projects beyond the handpiece (claim 2). The sleeve (6b) includes means for removably attaching it to the cover (8) and means (6a) at the other end for holding a cleaning accessory (claim 4).

6. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Aiyar (USP 5,471,695). The patent to Aiyar discloses a handpiece (15) in which is arranged a motor (50) for driving a vibration-generating means (60), an elongated protective cover (80) attachable to the handpiece and which includes an interior which receives the vibration-generating means and further including a sleeve (70) fitted onto the cover so

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as to cover a portion of its length. The recitation of "for an electric toothbrush" fails to structurally define over the prior art.

7. Claims 1-3 are rejected under 35 U.S.C. 102(a) as being anticipated by Hahn et al (USP 5,987,681). The patent to Hahn discloses an electric toothbrush (II) comprising a handpiece (1a) in which a motor (4) is arranged for driving a vibration-generating means (5), a protective cover (52, 7a OR 7b) and a sleeve (3) fitted onto the cover so as to cover at least a portion of its length. The sleeve (3) covers the entire length of the members which read on the "cover" (claim 2) and the ring (8) reads on the recited elastic ring (claim 3).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okada (USP 5,421,726) in view of DE 1,212,036. The patent to Okada discloses the invention substantially as claimed with the exception of the accessory supporting portion of the sleeve being obliquely oriented. '036 discloses a vibrating toothbrush wherein the brush end (1) of the "sleeve" (3) is obliquely oriented with respect to the axis of the sleeve. It would have been obvious to one of ordinary skill to have modified the device of Okada as such so as to better reach all portions of the teeth. The particular angle (claim 6) would be an obvious choice of design to one of ordinary skill.

10. Claims 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okada (USP 5,421,726) in view of Matsunaga (USP 1,414,886). The patent to Okada discloses the invention substantially as claimed with the exception of the opening for receiving the "accessory". The patent to Matsunaga discloses a polygonal opening (11) for accommodating a cleaning accessory (16). It would have been obvious to one of ordinary skill to have modified the device of Okada as such so that the cleaning portion could be replaced when worn while still retaining the "sleeve" (6). It would have been obvious to have modified the shape of the opening (claim 9) to suit the particular accessory shape. The opening of Matsunaga has a "clear width" and a "continuous design" insofar as these terms are defined claims 9-10.

11. Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okada (USP 5,421,726) in view of Moret et al (USP 4,880,382). The patent to Okada discloses the invention substantially as claimed with the exception of the particular types of accessories. The use of different shapes of brushes (claims 11-12) as well as flossing (44) on an motor driven toothbrush is shown by Moret. It would have been obvious to have modified the device of Okada with such diverse cleaning accessories so that different cleaning operations could be performed.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent to Montagnino is pertinent to a vibrating oral hygiene device with a removable accessory (50).

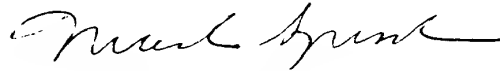
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (703) 308-1271. The examiner can normally be reached on M-Th (6-3:30), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (703) 308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Mark Spisich
Primary Examiner
Art Unit 1744

MS
December 30, 2002